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August 30, 1994

Mr. William Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

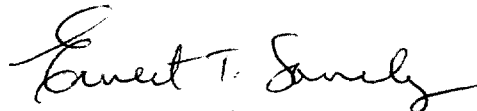
Re: In the Matter of Equal Access and Interconnection Obligations Pertaining to
Commercial Mobile Radio Services; CC Docket No. 94-54; RM-8012

Dear Mr. Caton:

Enclosed, on behalf of Rand McNally & Company, are an original plus nine (9) copies
of Comments in the above-captioned matter.

If you have any questions about this matter, please let me know.

Sincerely,



Ernest T. Sanchez
Counsel for
Rand McNally & Company

ETS:ck

Enclosures

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20544

In the Matter of)
)
Equal Access and Interconnection) CC Docket No. 94-54
Obligations Pertaining to)
Commercial Mobile Radio Services) RM-8012

TO: The Commission

**COMMENTS OF RAND McNALLY & COMPANY
ON NOTICE OF PROPOSED RULE MAKING
AND NOTICE OF INQUIRY**

Rand McNally & Company ("RMC") respectfully submits these comments in connection with the Notice of Proposed Rule Making and Notice of Inquiry adopted June 9, 1994 and released July 1, 1994 in the matter of Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services.

I. Introduction

Rand McNally & Company ("RMC") is the copyright owner of the MTA/BTA Listings as embodied in its Trading Area System MTA/BTA Diskette, and graphically represented in its

Commercial Atlas & Marketing Guide (the "MTA/BTA Map").¹ We understand that certain parties are urging, and the Commission is considering, mandating use of RMC's MTAs and BTAs as geographical boundaries in respect of equal access obligations for Commercial Mobile Radio Services (CMRS), for which RMC has not licensed the MTA/BTA Listings.

The MTA/BTA Listings constitute valuable intellectual property in which RMC has made a substantial investment. RMC is willing to permit the MTA/BTA Listings to be designated geographic boundaries for particular services and proceedings provided a satisfactory licensing arrangement can be reached. But absent a license, the Commission risks an unlawful taking of RMC's property by mandating use of the MTA/BTA Listings.

II. Rand McNally's MTA/BTA Listings are Protected by Copyright

RMC has a protectable copyright interest in the MTA/BTA Listings (as well as any other county listings or geographical representations that are substantially similar to the MTA/BTA Listings). Compilations of data or other materials are protectible subject matter under the federal copyright law, 17 U.S.C. section 103, provided they meet the threshold requirement of "originality," which the MTA/BTA Listings clearly do. They are the creative product of selection, coordination and arrangement that required the exercise of substantial judgment on the part of RMC compilers, and a significant investment by RMC.

¹ The MTA/BTA Listings and the MTA/BTA Map are collectively referred to herein as the "MTA/BTA Listings."

As explained in the Commercial Atlas & Marketing Guide, creation of the MTA and BTA boundaries involved "an intensive study of such factors as physiology, population distribution, newspaper circulation, economic activities, highway facilities, railroad service, suburban transportation, and field reports of experienced sales analysts." (See 1992 Commercial Atlas & Marketing Guide, at p. 39.) In this process, RMC used its creativity, judgment and discretion initially to select, from among the many possibilities, the factors that in its judgment would be appropriate for dividing the nation into trading areas, and then to apply these factors to select the BTA centers important enough to justify having a separate trading area, and then to coordinate and arrange the BTAs into MTAs.

We note that RMC's copyright in the 1992 Commercial Atlas & Marketing Guide (as well as other editions of that work) has been registered in the Copyright Office (Reg. No. TX 3 270 089), and that, in judicial proceedings, the Certificate of Registration constitutes "prima facie evidence of the validity of the copyright and of the facts stated in the certificate." 17 U.S.C. section 410(c).

III. RMC's Existing License Does Not Encompass This Proceeding

Last year, when RMC became aware that the Commission was considering use of its MTAs and BTAs as the geographic boundaries for certain types of personal communications services, we contacted the Commission. We filed written submissions on January 3 and January 13, 1994 in In re Amendment of the Commission's Rules to Establish New Personal Communications Services, Docket No. 90-314, RM-7140; RM-7175; RM-7618. In those

submissions, we explained that the Commission could not adopt these boundaries without RMC's consent, as the MTA/BTA Listings are protected by copyright, and such action could constitute an unlawful taking of RMC's property.

Subsequently, RMC was approached by PCIA, the Personal Communications Industry Association. PCIA sought, and RMC granted, a blanket license so that all parties with an interest in the FCC services and proceedings specified in the license would be permitted to reproduce and use the MTA/BTA Listings *only in connection with those services and proceedings*, subject to the terms of the license. The license made the MTA/BTA Listings available in various forms to the Commission and to interested parties either directly from RMC, or indirectly through its licensees under the license.

RMC's license with PCIA permits use of the MTA/BTA Listings:²

(i) In any documents prepared in connection with Services (described below) referred to in proceedings completed or pending before the [Federal Communications] Commission as of the date of this Agreement that rely on or refer to the Licensed Material. The "Services" shall be limited to: 2 GHz broadband Personal Communications Services ("PCS"), as authorized in GEN Docket 90-314 or any successor proceedings; 900 MHz narrowband PCS, as authorized in GEN Docket No. 90-314 and ET Docket 92-100 or any successor proceedings; 800 MHz wide-area Specialized Mobile Radio Services or Expanded Mobile Service Providers, as authorized in PR Docket No. 93-144 or any successor proceedings; and Local Multipoint Distribution Services, as authorized in CC Docket No. 92-297 or any successor proceedings.

² A blanket license fee was paid to RMC. The principal additional condition the license imposes on authorized users of the MTA/BTA Listings is to include a legend on reproductions (as specified in the license) indicating RMC's ownership.

(ii) In any documents or other materials prepared in connection with the licensing, building, marketing and operation of the Services listed in (i) above.

RMC advised the Commission of its license agreement with PCIA, and of its consent to use of the MTA/BTA Listings in connection with the services and proceedings specified in the agreement, but only for those services and proceedings. We indicated then that we were willing to license the MTA/BTA Listings for use in connection with other services and proceedings, if the parties with an interest in those proceedings sought such a license.

Recently, RMC learned that the Commission is considering, and parties before the Commission are urging, use of the MTA/BTA Listings for services and proceedings not embraced within our existing license agreement. Among them are Commercial Mobile Radio Services, Docket No. 93-252 (CMRS embraces many services not covered by our license, as well as a few that are covered), and this proceeding concerning equal access obligations for CMRS providers.³

IV. Rand McNally's MTA/BTA Listings May Not Be Used Without an Acceptable Licensing Arrangement

If the Commission mandates use of the MTA/BTA Listings without a license by RMC, all parties to the relevant proceedings, and anyone with an interest therein, would be in a position to argue that they may reproduce, adapt, and distribute the MTA/BTA Listings

³ Moreover, as the Commission itself has noted, the BOCs have filed a waiver request in the MFJ litigation, seeking to replace their current local service areas, LATAs, with MTAs. (Notice, para. 67, p.32)

(including the MTA/BTA Map), effectively removing the copyright protection from these works. RMC will be forced to expend significant time and resources to defend its copyrights, and ultimately RMC's copyrighted material could be deemed to have been placed in the public domain by the Commission's action. This would, in effect, amount to an unlawful taking of RMC's property.

RMC did not seek to have the MTAs and BTAs used as the geographic boundaries for various communications services, or for equal access or interconnection obligations in respect of those services. Nevertheless, we reiterate our willingness to work with the Commission in its efforts to establish appropriate geographic boundaries for communications services and related obligations of service providers. And we remain willing to license use of the MTA/BTA Listings on reasonable terms so that all parties affected by and interested in Commission proceedings may reproduce, modify and distribute them. But we are legitimately concerned that the Commission, if it mandates use of the MTA/BTA Listings for services not embraced within our license without our consent, will unfairly appropriate their value. RMC cannot simply stand by and allow a valuable asset to be destroyed. We will take all appropriate actions to preserve and defend our copyrights.

We request the Commission to refrain from jeopardizing RMC's copyright rights by mandating use of the MTA/BTA Listings, except for those services and proceedings covered by RMC's existing license agreement with PCIA or such other license as RMC may enter. If a satisfactory licensing arrangement cannot be reached, we respectfully urge the Commission to

adopt alternative geographic boundary definitions in respect of equal access obligations for CMRS providers, and for other services not covered by RMC's existing license.

Please do not hesitate to contact us if you have any questions or comments concerning this submission.

Respectfully submitted,

Rand McNally & Company

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Dated: August 30, 1994